

Message Text

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ACTION L-01

INFO OCT-01 SS-14 ISO-00 IO-06 JUSE-00 TRSE-00 COME-00

EB-03 OIC-01 AF-04 ARA-06 NEA-07 EA-06 EUR-08 H-01

SP-02 INR-05 CIAE-00 PRS-01 USIA-01 OMB-01 NSC-05

NSCE-00 DODE-00 PM-03 /076 W

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FM USMISSION USUN NEW YORK

TO SECSTATE WASHDC 953

INFO AMEMBASSY ALGIERS

AMEMBASSY BERN

AMEMBASSY BOGOTA

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PASS COMERCE FOR J. T. SMITH AND RICHARD DARMAN

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PASS TREASURY FOR JOHN NIEHUS

PASS JUSTICE FOR MARK RICHARD

E.O. 11652: N/A

TAGS: EGEN, UNGA, ECOSOC, EINV

SUBJECT: INTERGOVERNMENTAL WORKING GROUP ON CORRUPT
PRACTICES - FIRST SESSION

1. SUMMARY: (A) THE AD HOC INTERGOVERNMENTAL WORKING GROUP ON CORRUPT PRACTICES ESTABLISHED BY ECOSOC RESOLUTION 2041 AT U.S. INITIATIVE HELD ITS FIRST SESSION IN NEW YORK NOVEMBER 15-19. IN SLOW-PACED MEETING INTERGOVERNMENTAL WORKING GROUP ELECTED ITS CHAIRMAN, APPROVED AGENDA FOR FUTURE SESSIONS, AND CONDUCTED PRELIMINARY, GENERAL EXCHANGE OF VIEWS WHICH WERE SUPPLEMENTED BY SOME USEFUL BILATERAL DISCUSSIONS. MOST DELEGATIONS, PARTICULARLY LDC'S, WERE NOT PREPARED FOR SUBSTANTIVE DISCUSSION, AND WORK WAS HAMPERED SOMEWHAT BY OBSERVER STATUS OF WEO'S PENDING FINAL COMPOSITION OF THE GROUP AND BY FACT THAT SOME MEMBER GOVERNMENTS DID NOT SEND DELEGATES FROM CAPITALS. MUCH OF THE WEEK'S ACTIVITY CENTERED ON DISPUTE OVER AGENDA AS MEXICO, SUPPORTED BY UGANDA AND NIGERIA, REJECTED DRAFT AGENDA PROPOSED BY SECRETARIAT AND ATTEMPTED TO INSINUATE A SEPARATE AGENDA ITEM REQUIRING AGREEMENT ON DEFINITIONS OF TERMS AS PREDICATE TO WORK ON INTERNATIONAL AGREEMENT.

(B) U.S. DELEGATION OPENED SUBSTANTIVE WORK BY MAKING GENERAL STATEMENT ON NATURE OF ILLICIT PAYMENT PROBLEM AND CIRCULATING INFORMALLY AMONG DELEGATIONS "PRELIMINARY IDEAS" ON POSSIBLE SCOPE AND CONTENT OF AN INTERNATIONAL AGREEMENT. OTHER DELEGATIONS FOLLOWED U.S. EXAMPLE IN MAKING GENERAL STATEMENTS. AT THIS POINT IT WOULD APPEAR THAT IRAN, ITALY, AND COLOMBIA WILL SUPPORT U.S. PROPOSAL FOR AN INTERNATIONAL AGREEMENT ON ILLICIT PAYMENTS. CANADA, UK, AND ZAIRE MAY BE WILLING TO CONSIDER AN AGREEMENT, ALTHOUGH EACH HAS RESERVATIONS. MEXICO, NIGERIA, UGANDA, JAPAN, FRG, AND FRANCE APPEAR TO BE NEGATIVE, BUT THEIR POSITIONS MAY STILL BE OPEN. MANY DELEGATIONS HAVE DOUBTS ABOUT U.S. PROPOSALS FOR PUBLIC DISCLOSURE OF AGENTS' FEES AND SIMILAR PAYMENTS. IRAN FAVORS SOME LIMITED OFFICIAL USE

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HOME COUNTRY ROLE IN PROSECUTION OF OFFENDERS WHO LEAVE THE JURISDICTION OF HOST COUNTRIES, BUT CANADA IS CONCERNED ABOUT EXTRATERRITORIAL JURISDICTION OF HOME COUNTRIES. AFRICANS WILL SEEK TO INCLUDE COOPERATION WITH RACIST REGIMES IN DEFINITION OF CORRUPT PRACTICES AND ILLICIT PAYMENTS.

(C) FIRST SESSION OF THE WORKING GROUP ACCOMPLISHED MORE THAN MANY DELEGATES HAD EXPECTED BY INITIATING

CONSIDERATION OF SUBSTANTIVE ISSUES AND SETTING THE STAGE FOR THE WORKING SESSION SCHEDULED FOR JANUARY 31-FEBRUARY 11 AND MARCH 28-APRIL 8. HOWEVER, CONSIDERABLE EFFORT WILL HAVE TO BE MADE IN KEY CAPITALS IF SIGNIFICANT PROGRESS IS TO BE MADE AT NEXT MEETING. END SUMMARY.

2. COMPOSITION OF INTERGOVERNMENTAL WORKING GROUP - INTERGOVERNMENTAL WORKING GROUP AT PRESENT CONSISTS OF EIGHTEEN MEMBERS. TWELVE MEMBERS HAVE BEEN DESIGNATED: US, MEXICO, VENEZUELA, COLOMBIA, JAPAN, PAKISTAN, IRAN, ALGERIA, NIGERIA, ZAIRE, UGANDA, AND SIERRA LEONE. SIX MEMBERS REMAIN TO BE DESIGNATED OF WHICH WEO'S (3), EE'S (2), AND ASIAN GROUP (1). UK, FRANCE, ITALY, CANADA, BELGIUM, AND PRESUMABLY NORWAY ARE DETERMINED TO PARTICIPATE AS MEMBERS, SO A FURTHER EFFORT WILL BE MADE TO INCREASE SIZE OF GROUP TO ACCOMMODATE SOX WEO'S AT THIS SESSION INTERESTED WEO'S INCLUDING FRG PARTICIPATED ACTIVELY AS OBSERVERS. THE NETHERLANDS, BELGIUM, SWITZERLAND, AND NORWAY WERE SOMETIMES PRESENT BUT SAID NOTHING. AMONG LDC'S PAKISTAN AND SIERRA LEONE WERE ABSENT THROUGHOUT THE MEETING, AND ALGERIA SAID VERY LITTLE.

3. ORGANIZATION OF WORK (A) COMMITTEE ELECTED COLOMBIAN AMBASSADOR RIVAS AS CHAIRMAN BY ACCLAMATION. HE HAS ALREADY DEMONSTRATED COMPETENCE, TACT, AND OBJECTIVITY AND CAN BE EXPECTED TO ENCOURAGE SERIOUS WORK TOWARD AN INTERNATIONAL AGREEMENT. ELECTION OF OTHER OFFICERS HAS BEEN DEFERRED PENDING FINAL COMPOSITION OF THE GROUP. ELECTION OF RAPporteur WILL BE CRITICAL, AS NEW SOVIET MEMBER OF THE ECOSOC STAFF HAS BEEN ASSIGNED AS RECORDING SECRETARY FOR INTERGOVERNMENTAL WORKING GROUP.

(B) WITH SOME DIFFICULT INTERGOVERNMENTAL WORKING GROUP APPROVED AGENDA FOR FIRST SESSION AND PROVISIONAL AGENDA LIMITED OFFICIAL USE

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FOR SECOND SESSION WHICH INCLUDES THREE SUBSTANTIVE ITEMS AS FOLLOWS:

" 4. EXAMINATION OF THE MAJOR CONCEPTS CONTAINED IN OPERATIVE PARAGRAPH 1 (A) OF ECONOMIC AND SOCIAL COUNCIL RESOLUTION 2041 (LXI), PARTICULARLY THE CONCEPT OF ILLICIT PAYMENTS

"5. EXAMINATION OF THE PROBLEM OF CORRUPT PRACTICES, IN PARTICULAR BRIBERY IN INTERNATIONAL COMMERCIAL

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TRANSACTIONS BY TRANSNATIONAL AND OTHER CORPORATIONS, THEIR INTERMEDIARIES AND OTHERS INVOLVED.

6. ELABORATION IN DETAIL OF THE SCOPE AND CONTENTS OF AN INTERNATIONAL AGREEMENT TO PREVENT AND ELIMINATE ILLICIT PAYMENTS, IN WHATEVER FORM, IN CONNEXION WITH INTERNATIONAL COMMERCIAL TRANSACTIONS."

A BRIEF REPORT BY CHAIRMAN IS TO REFLECT CONSENSUS THAT WORK ON ALL THREE OF THESE ITEMS IS TO PROCEED IN PARALLEL SO THAT ELABORATION OF AN AGREEMENT WILL NOT HAVE TO WAIT FOR CONCLUSION OF INTERGOVERNMENTAL WORKING GROUP'S EXAMINATION OF THE OTHER ITEMS.

4. DISPUTE OVER THE AGENDA - SECRETARIAT ORIGINALLY PROPOSED A SIMPLE AND SATISFACTORY AGENDA LIMITED TO POINTS 5 AND 6 ABOVE. HOWEVER, MEXICO, SUPPORTED BY UGANDA AND NIGERIA AND LATER BY ALGERIA, REFUSED TO AGREE TO THAT TEXT. MEXICO PROPOSED THAT A NEW ITEM BE ADDED, BEFORE ITEM ON AGREEMENT, CALLING FOR DEFINITION OF TERMS CONTAINED IN PARAGRAPH 1 (A) OF ECOSOC RESOLUTION 2041, SUCH AS CORRUPT PRACTICES, ILLICIT PAYMENTS, TRANSNATIONAL CORPORATIONS, OTHER CORPORATIONS, INTERMEDIARIES, AND OTHER PERSONS INVOLVED. IN DOING SO, MEXICO MAY HAVE HAD DUAL OBJECTIVE OF (1) STRETCHING OUT THIS SESSION WHILE MINIMIZING SUBSTANTIVE DISCUSSION AND (2) LAYING BASIS FOR SLOWING DOWN FUTURE WORK ON AN INTERNATIONAL AGREEMENT. U.S. DELEGATION RESISTED DEPARTING FROM TERMS OF ECOSOC RESOLUTION UNTIL THE DISCUSSION BECAME TENDENTIOUS, AND ALL DELEGATIONS AGREED THAT A COMPROMISE WAS NECESSARY. IRAN AND COLOMBIA GENERALLY SUPPORTED U.S. ON AGENDA ISSUE, AND WHOSE WERE CONTRUCTIVE WHEN THEY TOOK PART.

5. GENERAL EXCHANGE OF VIEWS - A GENERAL EXCHANGE OF VIEWS WAS INITIATED BY U.S. STATEMENT ON MONDAY AFTERNOON, WHEN MEXICO AGREED THAT MEETINGS COULD GO AHEAD, WHILE DELETED OFFICIAL USE

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GATIONS SOUGHT INFORMALLY TO RESOLVE AGENDA ISSUE. IN SUBSEQUENT MEETINGS GENERAL STATEMENTS WERE MADE BY MOST DELEGATIONS PARTICIPATING AS MEMBERS OR OBSERVERS. MAIN POINTS OF INTEREST IN THE DEBATE WERE AS FOLLOWS: ALMOST ALL DELEGATES SUPPORTED PRINCIPLE OF INTERNATIONAL COOPERATION ON PROBLEM. CANADA URGED EFFECTIVE ACTION TO DEAL WITH SITUATION WHICH

HAS BECOME THREAT TO ECONOMIC AND POLITICAL INSTITUTIONS.
IRAN FOUND INTERNATIONAL ACTION NOT ONLY DESIRABLE BUT POSSIBLE IN VIEW OF UNIVERSAL CONSENSUS CONDEMNING CORRUPT PRACTICES.

6. IRAN CALLED FOR LEGALLY BINDING AGREEMENT BUT THOUGHT A FRAMEWORK FOR JUDICIAL ASSISTANCE AND INFORMATION EXCHANGE WOULD REPRESENT A SIGNIFICANT ACHIEVEMENT. IRAN ALSO EMPHASIZED THE NEED FOR HOME GOVERNMENTS TO ASSUME SOME RESPONSIBILITY FOR PROSECUTION, PARTICULARLY IN CASES WHERE PARTIES INVOLVED ARE ABLE TO ESCAPE HOST GOVERNMENT JURISDICTION.

7. MANY DELEGATIONS WERE SKEPTICAL REGARDING THE U.S. PROPOSALS FOR DISCLOSURE. UK DID NOT OPPOSE CONCEPT BUT EMPHASIZED NEED TO EXAMINE IMPLICATIONS OF DISCLOSURE FOR RIGHTS OF INDIVIDUALS, EXTRATERRITORIALITY AND DISCRIMINATION AGAINST TRANSNATIONALS. FRG AND FRANCE WERE BOTH MORE NEGATIVE ON DISCLOSURE, POINTING OUT ABSENCE OF DISCLOSURE TRADITION IN THEIR COUNTRIES. ITALY RESERVED ON DISCLOSURE "FOR THE MOMENT." A NUMBER OF DELEGATIONS STRESSED DESIRABILITY OF EXPLORING VARIOUS POSSIBILITIES FOR ACTION BEFORE AGREEING TO DISCLOSURE.

8. SEVERAL DELEGATIONS THOUGHT IT IMPORTANT TO TAKE ACCOUNT OF DIFFERING LEGAL SYSTEMS, AND THERE WAS GENERAL CONSENSUS THAT INTERGOVERNMENTAL WORKING GROUP SHOULD NOT UNDERTAKE TO HARMONIZE NATIONAL CRIMINAL LAWS OR TO DRAFT INTERNATIONAL CRIMINAL LAW. CANADA WAS CONCERNED ABOUT EXTRATERRITORIAL IMPLICATIONS OF ANY INTERNATIONAL AGREEMENT AND SAID ANY MULTILATERAL CONVENTION SHOULD INCLUDE MEASURES TO REDUCE CONFLICTS BETWEEN JURISDICTIONS.

9. SOME DELEGATIONS (MEXICO, VENEZUELA, FRANCE) NOTED RELATIONSHIP OF WORK ON CORRUPT PRACTICES TO TRANSNATIONAL CORPORATION CODE OF CONDUCT EXERCISE AND AGREED THAT TWO LIMITED OFFICIAL USE

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GROUPS SHOULD AVOID DUPLICATION OF EFFORT. MEXICAN DELEGATE SAID PRIVATELY MEXICO STILL WORRIED THAT ILLICIT PAYMENTS WOULD SLOW PROGRESS ON TRANSNATIONAL CORPORATION CODE. MEXICAN STATEMENT ALSO CALLED INCREASING CORRUPTION BY TRANSNATIONAL CORPORATION A "THREAT TO NATIONAL SOVEREIGNTY."

10. NIGERIA AND UGANDA CRITICIZED TRANSNATIONAL CORPORATIONS FOR CORRUPTING PUBLIC OFFICIALS, INTERFERING IN INTERNAL AFFAIRS OF GOVERNMENTS, AND SUPPORTING RACIST REGIMES IN SOUTHERN AFRICA. THEY EMPHASIZED NEED FOR COOPERATION OF HOME COUNTRIES TO CONTROL TRANSNATIONAL CORPORATIONS AND INDICATED INTEREST IN AN AGREEMENT. BOTH INDICATED THAT AN EXAMINATION OF CORRUPT PRACTICES SHOULD INCLUDE TRANSNATIONAL

CORPORATIONS COOPERATION WITH RACIST REGIMES, ANDUGANDA
STATED THAT TAXES PAID TO ILLEGAL REGIME SHOULD BE CONSIDERED
"ILLCIT PAYMENTS."
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